

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

MAY FLOWER INTERNATIONAL, INC.,

Plaintiffs,

vs.

APOLLO FOOD INTERNATIONAL, INC.,  
WING FUNG HONG LTD, and  
A & C BEST FOOD TRADING INC.

Defendants.

Civil Action No. 19-cv-2716 NGG-PK

**ANSWER OF DEFENDANT A & C BEST FOOD TRADING INC.**

Defendant A & C Best Food Trading Inc. (“A & C” or “Defendant”), by and through its undersigned counsel, hereby answers the Complaint and Jury Demand (“Complaint”) filed by Plaintiff May Flower International, Inc. (“May Flower” or “Plaintiff”) as follows:

**PRELIMINARY STATEMENT**

1. Denies the allegations in Paragraph 1, except to admit that Plaintiff purports to allege claims for trademark infringement, unfair competition, passing off and dilution in violation of the laws of the United States and the State of New York.

2. Demies that plaintiff is entitled to a permanent injunction or monetary relief as alleged in the Complaint.

**JURISDICTION AND VENUE**

3. Denies the allegations in Paragraph 3, except to admit that Plaintiffs purport to allege claims under the Lanham Act.

4. Denies the allegations in Paragraph 4, except to admit that Plaintiff maintains a place of business in Hicksville, New York.

### **PARTIES**

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 .

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7.

8. Admits the allegations in Paragraph 8.

### **FACTUAL BACKGROUND**

9. Denies knowledge or information sufficient to form a belief as to the truth of allegations in Paragraph 9.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22.

23. Denies that A & C has offered for sale infringing goods. Denies knowledge or information sufficient to form a belief as to the truth of the balance of allegations in Paragraph 23.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24.

25. The allegation in Paragraph 25 related to consumer confusion is a legal conclusion and therefore does not require a response. To the extent any response is required, and as to the remaining allegations in Paragraph 52, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26.

27. Denies the allegations in Paragraph 27.

28. Admits that A & C has no connection to May Flower. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 as same applies to the other defendants.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31.

32. Denies the allegations at to A & C. Denies knowledge or information sufficient to form a belief as to the truth of the balance of allegations in Paragraph 32.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33.

34. Denies the allegations in Paragraph 34.

**FIRST CAUSE OF ACTION BY PLAINTIFF MAY FLOWER**

**Trademark Infringement**

**15 U.S.C. § 1114 and Common Law**

35. A & C repeats and realleges its response to Paragraphs 1 through 34 of the Complaint as if fully set forth herein.

36. Denies the allegations in Paragraph 36 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

37. Denies the allegations in Paragraph 37 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

38. Denies the allegations in Paragraph 38 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

39. Denies the allegations in Paragraph 39 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

40. Denies the allegations in Paragraph 40 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

**SECOND CAUSE OF ACTION BY PLAINTIFF MAY FLOWER**

**Unfair Competition**

**15 U.S.C. § 1125(a)**

41. A & C repeats and realleges its response to Paragraphs 1 through 40 of the Complaint as if fully set forth herein.

42. Denies the allegations in Paragraph 42 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

43. Denies the allegations in Paragraph 43 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

44. Denies the allegations in Paragraph 44 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

45. Denies the allegations in Paragraph 45 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

46. Denies the allegations in Paragraph 46 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

**THIRD CAUSE OF ACTION BY PLAINTIFF MAY FLOWER**

**Unfair Competition and Passing Off**

47. A & C repeats and realleges its response to Paragraphs 1 through 46 of the Complaint as if fully set forth herein.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49.

50. Denies the allegations in Paragraph 50 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

51. Denies the allegations in Paragraph 51 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

52. Denies the allegations in Paragraph 52 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

**FOURTH CAUSE OF ACTION BY PLAINTIFF MAY FLOWER**

**Deceptive Trade Practices**

**New York General Business Law**

53. A & C repeats and realleges its response to Paragraphs 1 through 52 of the Complaint as if fully set forth herein.

54. Denies the allegations in Paragraph 54 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

55. Denies the allegations in Paragraph 55 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

56. Denies the allegations in Paragraph 56 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

57. Denies the allegations in Paragraph 57 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

58. Denies the allegations in Paragraph 58 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

**FIFTH CAUSE OF ACTION BY PLAINTIFF MAY FLOWER**

**New York General Business Law**

59. A & C repeats and realleges its response to Paragraphs 1 through 58 of the Complaint as if fully set forth herein.

60. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60.



61. Denies the allegations in Paragraph 61 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

62. Denies the allegations in Paragraph 62 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

63. Denies the allegations in Paragraph 63 as they pertain to A & C, and as to the other defendants, A & C denies knowledge or information sufficient to form a belief as to the truth of the allegations.

#### **PRAYER FOR RELIEF**

64. A & C denies that Plaintiff is entitled to any relief which it seeks.

#### **DEMAND FOR JURY TRIAL**

65. Transworld demands a jury trial for all claims in the Complaint susceptible to a trial by jury.

#### **AFFIRMATIVE AND OTHER DEFENSES**

##### **FIRST DEFENSE**

1. The Complaint fails to state a claim upon which relief may be granted.

##### **SECOND DEFENSE**

2. The claims alleged in the Complaint are barred, in whole or in part, by the doctrine of laches.

**THIRD DEFENSE**

3. The claims for equitable relief alleged in the Complaint are barred by Plaintiff's unclean hands.

**FOURTH DEFENSES**

4. The claims alleged in the Complaint are barred by the doctrine of waiver, consent, and acquiescence.

**FIFTH DEFENSE**

5. The claims alleged in the Complaint are barred by the doctrine of equitable estoppel.

**SIXTH DEFENSE**

6. Plaintiff has failed to take steps to mitigate its damages.

**SEVENTH DEFENSE**

7. The claims in the Complaint are barred because A & C has not committed an act of infringement.

**EIGHTH DEFENSE**

8. The claims in the Complaint are barred by the First Sale Doctrine and/or the allegedly internationally distributed products are not materially different from the domestically distributed products.

**WHEREFORE**, A & C respectfully requests that the Court dismiss the Complaint together with an award of attorneys' fees, costs and disbursements and such other and further relief as the Court deems just and proper.

Respectfully Submitted.

By: 

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*Attorneys for Defendant A & C Best Food  
Trading Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 8, 2019, I have served the foregoing document by ECF to the following counsel of record who have appeared in the above-matter:

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